

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**IN RE: NATIONAL COLLEGIATE
ATHLETIC ASSOCIATION STUDENT-
ATHLETE CONCUSSION LITIGATION**

MDL NO. 2492

Master Docket No. 13-cv-09116

Judge John Z. Lee

Magistrate Judge M. David Weisman

**UNOPPOSED SECOND MOTION FOR LEAVE TO PAY
MEDICAL MONITORING EXPENSES
FROM THE SETTLEMENT FUND**

Settlement Class Counsel respectfully requests that the Court grant leave to the Program Administrator to pay Medical Monitoring Program expenses from the Medical Monitoring Fund to Epiq Mass Tort (fka Garretson Resolution Group) (1) for payment of Epiq's invoices from the Medical Monitoring Fund for the total amount of \$198,686 in fees and expenses accrued between March 31, 2018 to April 30, 2019 (see Ex. 1 and 2), (2) \$939,000 to complete set-up and begin implementing the Medical Monitoring Program, and (3) \$20,600 for an efficient process to handle the submission and posting of certifications of compliance of NCAA member institutions with the return-to-play guidelines as set forth in Section IX.B of the Settlement Agreement. In support thereof, Settlement Class Counsel state as follows:

1. On November 5, 2019, the Court set November 18, 2019 as the Effective Date under the terms of the Second Amended Class Action Settlement Agreement (Dkt. 558-1) ("Settlement Agreement"). *See* Dkt. 578. Under the terms of the Settlement Agreement, Epiq, as the Program Administrator, is directed to make certain payments from the Medical Monitoring Fund, including "[a]ll payments for costs of administration of the Medical Monitoring Program, in amounts to be approved by the Court." Dkt. 558-1 at Section IV.A.2.c.

2. Epiq previously submitted invoices to Settlement Class Counsel for January 1, 2016 through March 31, 2018. Since that time, Epiq has incurred an additional \$198,686 in expenses. *See* Ex. 1 and 2. Epiq's activities since March 31, 2018 include ongoing planning and communication with the Parties (\$12,860); issuance of attorney fees/costs and class representative service awards (\$6,499); extensive recruitment of potential network providers in all thirty-four target cities (\$70,137); and planning, design, development, and coordination for information technology applications, including transferring the Settlement Website and call center, creation of Settlement Class Member registration functionality, development of the online Screening Questionnaire, and development of other Program administration functionality (\$103,124). Declaration of William C. Mulvey of Epiq Mass Tort ("Mulvey Decl."), ¶¶ 11–12.

3. In addition to those foundational costs¹ already incurred, Epiq requests release of \$939,000 in projected fees and expenses in order to complete set-up and begin implementing the Medical Monitoring Program. Mulvey Decl., ¶¶ 13, 18.

4. Additionally, Epiq requests approval of cost projections in the amount of \$20,600 to oversee submission and posting of certifications of compliance of NCAA member institutions with the return-to-play guidelines as set forth in Section IX.B of the Settlement Agreement. Mulvey Decl., ¶ 18.

5. Per the Court's instructions, Epiq has demonstrated that the costs are in line with the costs addressed in the Epiq Reports dated April 14, 2015 (Dkt. 161), April 20, 2015 (Dkt. 170), and August 9, 2018 (Dkt. 516). Mulvey Decl., ¶¶ 14–17.

¹ Foundational costs include three basic categories: (i) overall program planning and initiation, (ii) identifying and enrolling the network providers, and (iii) IT system customization and development, including development of the online Screening Questionnaire. Mulvey Decl., ¶¶ 13–14.

6. Specifically, Mr. Mulvey outlines each category of costs incurred and to be incurred against the projected costs as follows:

Category	Projected 2015 Estimate (Dkt 161, 170) (not adjusted for inflation)	Work Completed and Previously Approved (2018 Garretson Decl.)²	Remaining Estimate Per August 2018 Submission (Mulvey Decl.)	Work Completed and Subject to Court Approval (Mulvey Decl.)	Additional Work to Complete Medical Monitoring Program Set-Up (Mulvey Decl.)	Estimate as to Whether Parties Are on Target for Meeting Previously Submitted Budget (Mulvey Decl.)
Program Initiation and Planning	\$152,900	\$192,635	\$35,025 (¶ 14)	\$12,860 (¶ 14)	\$24,000 (¶ 15)	Within the range of projections for this category of tasks included in the August 2018 submission, adjusted for inflation (¶ 15)
Program Location Network Development	\$455,483	\$158,306 (¶ 17)	\$320,266 (¶ 14)	\$70,137 (¶ 14)	\$270,000 (¶ 16)	In line with projections for this category of tasks included in the August 2018 submission, adjusted for inflation (¶ 16)
IT Configuration and Development	\$663,300	\$7,886 (¶ 17)	\$702,439 (¶ 14)	\$103,124 (¶ 14)	\$645,000 (¶ 17)	In line with projections for this category of tasks

² Filed previously at Dkt. 516-1.

Category	Projected 2015 Estimate (Dkt 161, 170) (not adjusted for inflation)	Work Completed and Previously Approved (2018 Garretson Decl.) ²	Remaining Estimate Per August 2018 Submission (Mulvey Decl.)	Work Completed and Subject to Court Approval (Mulvey Decl.)	Additional Work to Complete Medical Monitoring Program Set-Up (Mulvey Decl.)	Estimate as to Whether Parties Are on Target for Meeting Previously Submitted Budget (Mulvey Decl.)
						included in the August 2018 submission, adjusted for inflation (¶ 17)
Fixed and Variable Costs	N/A	\$11,010 (¶ 17)	N/A	\$6,499 (¶ 12)	N/A	N/A
Pass Through Expenses	N/A	\$25,605 (¶ 17)	N/A	\$6,066 (¶ 14; <i>see also</i> ¶ 14 n.7)	N/A	N/A

7. Additionally, counsel for the NCAA have requested (and Class Counsel do not oppose) that in the interests of efficiency, Epiq oversee the submission and posting of the written certifications by NCAA member institutions. Mulvey Decl., ¶ 18. Epiq has worked with Counsel for the NCAA and Class Counsel to develop an efficient process using DocuSign that would enable each of the 1,117 NCAA member institutions to log into a dedicated webpage and electronically sign a certificate of compliance. *Id.* Such an approach eliminates the need for Epiq's developers to perform such work that would otherwise be needed such as building a portal, assigning and communicating log-in credentials, and more. *Id.* Fees for the e-signature functionality and Epiq's administrative fees to download, verify, and publish the certifications are estimated at \$20,600. *Id.*

These costs were not part of cost estimate included in the 2015 Epiq Report (Dkt. 161, ¶ 38) and thus would be in addition to the foundational costs described above. *Id.*

8. Should the Court approve payment of the amounts requested in the Mulvey Declaration, the total amount billed and/or paid will equal \$1,553,728, inclusive of all one-time pass-through expenses. *See supra* ¶ 6; Mulvey Decl., ¶ 19.

9. Based on the Court's instructions for an estimate as to whether the Parties are on target for meeting the previously submitted budget, Epiq: (1) estimates that Program Initiation and Planning activities, if approved, will be approximately \$229,495 which is within the range of projections for this category of tasks included in the August 2018 Declaration, after adjusting for inflation; (2) estimates that Program Location Network Development tasks will be \$498,443, which is in line with the projections in the August 2018 Declaration, adjusted for inflation; and (3) estimates that IT Configuration and Development work will be approximately \$756,010, which is consistent with the estimate in the August 2018 Declaration, adjusted for inflation. Mulvey Decl., ¶¶ 15–17, 19. *See also* Garretson Decl., ¶¶ 6, 18–22.

10. Settlement Class Counsel certifies that these settlement expenses are necessary for the purpose of a just and efficient settlement of this case.

11. The NCAA does not oppose this motion.

WHEREFORE, Settlement Class Counsel respectfully requests (1) approval for payment of Epiq's invoices from the Medical Monitoring Fund in the total amount of \$198,686 in fees and expenses for services performed from March 31, 2018 to December 31, 2019 (see Ex. 1 and 2), (2) grant leave for Epiq to release \$939,000 from the Medical Monitoring Fund for Epiq to complete the set-up and begin implementing the Medical Monitoring Program, and (3) approve cost projections in the amount of \$20,600 for purposes of the submission and posting of

certifications of compliance of NCAA member institutions with the return-to-play guidelines as set forth in Section IX.B of the Settlement Agreement.

Date: April 8, 2020

Respectfully submitted,

By: /s/ Daniel J. Kurowski

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CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that on April 8, 2020 a true and correct copy of the foregoing was filed electronically via CM/ECF, which caused notice to be sent to all counsel of record.

By: /s/ Daniel J. Kurowski